

SUPREME COURT OF INDIA

Municipal Board

Vs.

District Judge

(R.C. Lahoti and S.N. Variava JJ.)

01.11.2000

ORDER

1. The appellant - Municipal Board, Kotdwar, which is the judgment debtor in execution proceedings, raised certain objections to the maintainability of the execution application, which were rejected by the executing court. The order of the executing court has been maintained by the district court in revision. A petition under Article 227 of the Constitution of India preferred before the High Court, has been dismissed summarily. The judgment debtor has come up in appeal by special leave to this Court.

2. Having heard the learned Counsel for the parties we are of the opinion that no fault can be found with the order of the High Court declining to interfere with the orders of the District Judge and the executing court to the extent of holding that objections as regards maintainability of the execution application were rightly turned down.

3. During the course of hearing, the learned Counsel for the appellant, invited our attention to a letter dated 20th December, 1985 purportedly written by C.P. Grover, one of the decree holders, stating that he was not interested in executing the decree inasmuch as a school building had come up on the property forming subject matter of the decree and that the execution application filed by Dr. Jagannath, respondent No. 4 was unauthorised. The executing court had disposed of the objections in regard to the maintainability of the execution application by its order dated 22nd October, 1983. The letter dated 20th December, 1985, referred to hereinabove, is subsequent to the date of the order of the executing court. Obviously, this letter has not received the attention of the executing court. The learned Counsel for the appellant also submitted that the school on the decretal property had come up in the year 1957 and has been functional ever since then and it would not be in public interest to execute the decree and deliver possession over the land by demolishing school to the decree holder and it would be appropriate if the executing court may grant a suitable compensation to the decree-holder interested in executing the decree. None of these contentions were raised before the revisional court or the High Court and, therefore, we are not inclined to entertain these submissions for the first time in this appeal.

4. The appeal is dismissed subject to the observation that the judgment debtor would be at liberty to invite the attention of the executing court to the letter dated 20th December 1985 purported to have been written by C.P. Grover, one of the decree-holders and also invite the executing court to adjudicate upon the right of the decree-holder prosecuting the execution application, to do so, in the light of the letter dated 20th December, 1985.

5. It appears that in their reply dated 4th September, 1982 to the objections preferred by the Municipal Board, the decree-holders had also expressed their willingness to compromise the matter laying the blame at the doors of the judgment debtor for not compromising and delaying and postponing the matter. We do not express any opinion thereon and leave this aspect to be taken care of by the executing court.

6. No order as to costs.